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**OFFICE OF PETITIONS**

In re Application of :  
Daniel M. Herzog et al :  
Application No. 10/823,402 : DECISION ON PETITION  
Filed: April 12, 2004 : UNDER 37 CFR 1.313(c)(2)  
Attorney Docket No. 2316.1845US01 :

This is a decision on the petition under 37 CFR 1.313(c)(2); filed August 24, 2005, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED as moot**.

Unfortunately, the instant petition was not received in the deciding official's office within sufficient time to avert the issuance of the above-identified application into a patent. The Office sincerely apologizes for any inconvenience caused petitioner in this matter.


Petitioner's attention is directed to 37 CFR 1.313(d), which states:

A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue**.

Since this application has issued, the concurrently filed request for continued examination (RCE) is improper and will not be processed. In view thereof, the \$790 filing fee submitted therefor, as well as the petition fee of \$130, will be refunded in due course.

The Information Disclosure Statement has been placed of record in the file of the above-identified application without further consideration. See 37 CFR 1.97(i).

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

  
Frances Hicks  
Petitions Examiner  
Office of Petitions